IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Rajendra alias Raj Kumar. Versus State of Rajasthan & Anr.

S.B. Criminal Misc. Petition No. 823/1998 against the order dated 13-5-1998 passed by the Additional Chief Judicial Magistrate, Deedwana, district Nagaur, in Criminal Case No. 31/98.

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Date of Order: August 23, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Sunil Mehta and Mr. Shashikant Maheshwari, , for the petitioner.

Mr. Ashok Upadhyaya, Public Prosecutor for the State.
Mr. I.R. Chaudhary, for the non-petitioner No.2.

BY THE COURT:

This criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the order dated 13-5-1998 passed by the Additional Chief Judicial Magistrate, Deedwana, district Nagaur (for short, "the trial Court" hereinafter), whereby the trial Court released the scooter No.RJ.2-M-4210 in favour of non-petitioner No.2 Smt. Sanju, the wife of the petitioner, on Supurdginama. Aggrieved by the order impugned, the petitioner has filed the instant criminal miscellaneous petition.

I have learned learned counsel for the parties and carefully gone through the order impugned.

It appears from the impugned order that the petitioner married to the non-petitioner No.2. However, subsequently, it is alleged that the petitioner harassed and subjected the non-petitioner No.2 to cruelty as also refused to return her dowry articles and misappropriated the same. A crime report was lodged, being FIR No. 38/1998, against the petitioner by the non-petitioner No.2 for the offences under Sections 406 and 498-A IPC. The scooter in question is the subject matter of the dowry articles in the said crime report. During investigation of crime report No. 38/1998, the police recovered the dowry articles belonging to the non-petitioner No.2 from the present petitioner including the scooter in question which, according to the non-petitioner No.2 was given to the petitioner at the time of her engagement by her father. The non-petitioner No.2 has placed on record a receipt No.1954 dated 21-6-1993, by which Jagdish Prasad Soni, the father of the non-petitioner No.2, purchased the said scooter from P.N. Motors (Pvt.) Ltd. Jaipur. During investigation of the crime report, the statements of witnesses were recorded and the witnesses stated that the scooter in question was purchased by the father of the non-petitioner No.2 and was given to the petitioner at the time of engagement of the non-petitioner No.2 with the petitioner

and subsequently the non-petitioner No.2 was married to the petitioner and, therefore, it is the "Istridhan" of the non-petitioner apart from other dowry articles which the non-petitioner No.2 claimed to be her "Istridhan."

Before the trial Court, the petitioner as well as the non-petitioner No.2 filed applications under Section 457 of the Code seeking custody of the scooter. By the well reasoned order, the trial Court prima facie came to the conclusion that the said scooter was given to the petitioner as a dowry article and, therefore, it being the dowry article, belongs to the non-petitioner No.2 as her "Istridhan", released the scooter in her favour.

It is contended by the learned counsel for the petitioner that the registration of the said scooter is in the name of the petitioner and along with other articles, the said scooter was recovered from the possession of the petitioner, therefore, the petitioner is the best person entitled for the custody of the scooter during pendency of the case. Learned counsel for the non-petitioner No.2 submits that from the evidence on record, it is prima facie established that the said scooter was given by the father of the non-petitioner No.2 as a dowry article and, therefore, it being a dowry article, is the "Istridhan" of the non-petitioner No.2.

I have given my thoughtful consideration to the rival

submissions made by the learned counsel for the parties.

From the facts emerging from the impugned order, it is clear that on the crime report lodged by the non-petitioner No.2, the dowry articles, including the scooter in question, were recovered as the dowry articles belonging to the non-petitioner No.2. Apart from other dowry articles, the scooter was to be given to the non-petitioner No.2 during pendency of the case. The petitioner claims custody of the scooter in question only on the ground that the registration of the scooter is in his name. Merely because the registration of the scooter is in the name of the petitioner, it cannot be concluded at this stage that the petitioner is the only and only the owner of the said scooter. The matter is yet to be decided on the basis of the evidence and prima facie evidence goes against the petitioner, rather it is supporting the case of the non-petitioner No.2. Therefore, the trial Court was justified in giving the interim custody of the scooter to the non-petitioner No.2 during pendency of the case.

The criminal miscellaneous petition is, therefore, dismissed.

(H.R. PANWAR), J.

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